

REPUBLIC OF SOUTH AFRICA

MENTAL HEALTH CARE BILL

(As amended by the Select Committee on Social Services (National Council of Provinces)) (The English text is the official text of the Bill)

(MINISTER OF HEALTH)

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BILL

To provide for the care, treatment and rehabilitation of persons who are mentally ill; to set out different procedures to be followed in the admission of such persons; to establish Review Boards in respect of every health establishment; to determine their powers and functions; to provide for the care and administration of the property of mentally ill persons; to repeal certain laws; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that health is a state of physical, mental and social well-being and that mental health services should be provided as part of primary, secondary and tertiary health services;

RECOGNISING that the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), prohibits against unfair discrimination of people with mental or other disabilities;

RECOGNISING that the person and property of a person with mental disorders or mental disabilities, may at times require protection and that members of the public and their properties may similarly require protection from people with mental disorders or mental disabilities; and

RECOGNISING further that there is a need to promote the provision of mental health care services in a manner which promotes the maximum mental well-being of users of mental health care services and communities in which they reside;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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SCHEDULE

LAWS REPEALED BY THIS ACT

CHAPTER I

INTRODUCTION

Definitions

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1. In this Act, unless the context indicates otherwise—

- (i) “**administrator**” means a person appointed in terms of section 59 to care for and administer the property of a mentally ill person and where applicable includes an interim administrator;
- (ii) “**assisted care, treatment and rehabilitation**” means the provision of health interventions to people incapable of making informed decisions due to their mental health status and who do not refuse the health interventions and “**assisted care, treatment and rehabilitation services**” has a corresponding meaning; 15
- (iii) “**assisted mental health care user**” means a person receiving assisted care, treatment and rehabilitation; 20
- (iv) “**associate**” means a person with a substantial or material interest in the well-being of a mental health care user or a person who is in substantial contact with the user;
- (v) “**care and rehabilitation centres**” means health establishments for the care, treatment and rehabilitation of people with intellectual disabilities; 25
- (vi) “**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- (vii) “**Correctional Services Act**” means the Correctional Services Act, 1998 (Act No. 111 of 1998); 30
- (viii) “**court**” means a court of law;
- (ix) “**Criminal Procedure Act**” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (x) “**head of a health establishment**” means a person who manages the establishment concerned; 35
- (xi) “**health care provider**” means a person providing health care services;
- (xii) “**health establishment**” means institutions, facilities, buildings or places where persons receive care, treatment, rehabilitative assistance, diagnostic or therapeutic interventions or other health services and includes facilities such as community health and rehabilitation centres, clinics, hospitals and psychiatric hospitals; 40
- (xiii) “**involuntary care, treatment and rehabilitation**” means the provision of health interventions to people incapable of making informed decisions due to their mental health status and who refuse health intervention but require such services for their own protection or for the protection of others and “**involuntary care, treatment and rehabilitation services**” has a corresponding meaning; 45
- (xiv) “**involuntary mental health care user**” means a person receiving involuntary care, treatment and rehabilitation;
- (xv) “**Health Professions Act**” means Health Professions Act, 1974 (Act No. 56 of 1974); 50
- (xvi) “**medical practitioner**” means a person registered as such in terms of the Health Professions Act;

- (xvii) **“mental health care practitioner”** means a psychiatrist or registered medical practitioner or a nurse, occupational therapist, psychologist or social worker who has been trained to provide prescribed mental health care, treatment and rehabilitation services;
- (xviii) **“mental health care provider”** means a person providing mental health care services to mental health care users and includes mental health care practitioners; 5
- (xix) **“mental health care user”** means a person receiving care, treatment and rehabilitation services or using a health service at a health establishment aimed at enhancing the mental health status of a user, State patient and mentally ill prisoner and where the person concerned is below the age of 18 years or is incapable of taking decisions, and in certain circumstances may include— 10
 - (i) prospective user;
 - (ii) the person’s next of kin; 15
 - (iii) a person authorised by any other law or court order to act on that persons behalf;
 - (iv) an administrator appointed in terms of this Act; and
 - (v) an executor of that deceased person’s estate and **“user”** has a corresponding meaning; 20
- (xx) **“mental health status”** means the level of mental well-being of an individual as affected by physical, social and psychological factors and which may result in a psychiatric diagnosis;
- (xxi) **“mental illness”** means a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a mental health care practitioner authorised to make such diagnosis; 25
- (xxii) **“mentally ill prisoner”** means a prisoner as defined in section 1 of the Correctional Services Act in respect of whom an order has been issued in terms of section 52(3)(a) to enable the provision of care, treatment and rehabilitation services at a health establishment designated in terms of section 49; 30
- (xxiii) **“Minister”** means a Minister responsible for Health;
- (xxiv) **“national department”** means the National Department of Health services within the national sphere of government;
- (xxv) **“official curator ad litem”** means the Director of Public Prosecutions of a province in whose jurisdiction the State patient is detained; 35
- (xxvi) **“prescribed”** means prescribed by regulation;
- (xxvii) **“prison”** means a prison as defined in section 1 of the Correctional Services Act;
- (xxviii) **“property”**, for purposes of Chapter VIII, includes income, finance, business or undertaking; 40
- (xxix) **“provincial department”** means the department responsible for rendering health services within the provincial sphere of government;
- (xxx) **“psychiatric hospital”** means a health establishment that provides care, treatment and rehabilitation services only for users with mental illness; 45
- (xxxi) **“psychiatrist”** means a person registered as such in terms of the Health Professions Act;
- (xxxii) **“psychologist”** means a person registered as such in terms of the Health Professions Act;
- (xxxiii) **“rehabilitation”** means a process that facilitates an individual attaining an optimal level of independent functioning; 50
- (xxxiv) **“relevant member of the Executive Council”** means a member of the Executive Council responsible for health in a province;
- (xxxv) **“Review Board”** means Mental Health Review Board established in terms of section 18; 55
- (xxxvi) **“severe or profound intellectual disability”** means a range of intellectual functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care and requiring constant aid and supervision, to severely restricted sensory and motor functioning and requiring nursing care; 60
- (xxxvii) **“social worker”** means a person registered as such in terms of the Social Services Professions Act, 1978 (Act No. 110 of 1978);

- (xxxviii) “**State patient**” means a person so classified by a court directive in terms of section 77(6)(a) or 78(6) of the Criminal Procedure Act;
- (xxxix) “**this Act**” includes the regulations;
- (xl) “**voluntary care, treatment and rehabilitation**” means the provision of health interventions to a person who gives consent to such interventions. 5

Interpretation

2. (1) This Act must be interpreted in a manner that is consistent with the objectives of this Act.
- (2) In the event of any conflict arising between this Act and any other law other than the Constitution, this Act must prevail. 10

CHAPTER II

FUNDAMENTAL PROVISIONS

Objects of Act

3. The objects of this Act are to—
- (a) regulate the mental health care in a manner that— 15
 - (i) makes the best possible mental health care, treatment and rehabilitation services available to the population equitably, efficiently and in the best interest of mental health care users within the limits of the available resources;
 - (ii) co-ordinates access to mental health care, treatment and rehabilitation services to various categories of mental health care users; and 20
 - (iii) integrates the provision of mental health care services into the general health services environment;
 - (b) regulate access to and provide mental health care, treatment and rehabilitation services to— 25
 - (i) voluntary, assisted and involuntary mental health care users;
 - (ii) State patients; and
 - (iii) mentally ill prisoners;
 - (c) clarify the rights and obligations of mental health care users and the obligations of mental health care providers; and 30
 - (d) regulate the manner in which the property of persons with mental illness and persons with severe or profound intellectual disability may be dealt with by a court of law. 30

Implementation of policies and measures by State

4. Every organ of State responsible for health services must determine and co-ordinate the implementation of its policies and measures in a manner that— 35
- (a) ensures the provision of mental health care, treatment and rehabilitation services at primary, secondary and tertiary levels and health establishments referred to in section 5(1);
 - (b) promotes the provision of community-based care, treatment and rehabilitation services; 40
 - (c) promotes the rights and interests of mental health care users; and
 - (d) promotes and improves the mental health status of the population.

Designation of health establishments administered under the auspices of State as psychiatric hospitals or as care and rehabilitation centres 45

5. (1) The head of the national department must, with the concurrence of the head of the relevant provincial department within 120 days of the commencement of this Act, designate health establishments or part of a health establishment which must serve as—
- (a) psychiatric hospitals; or
 - (b) care and rehabilitation centres. 50
- (2) A designation referred to in subsection (1) may at any time be revoked or varied by the head of the national department with the concurrence of the head of the relevant provincial department.

Provision of mental health care, treatment and rehabilitation services at health establishments

6. (1) Health establishments must—
 - (a) provide any person requiring mental health care, treatment and rehabilitation services with the appropriate level of mental health care, treatment and rehabilitation services within its professional scope of practice; or 5
 - (b) refer such person, according to established referral and admission routes, to a health establishment that provides the appropriate level of mental care, treatment and rehabilitation services.
- (2) A health establishment may not cause a mental health care user to receive psychiatric medication for more than six months unless authorised by a mental health care practitioner who is designated to provide medication and review psychiatric treatment. 10
- (3) The head of the national department must, with the concurrence of the heads of the relevant provincial departments in respect of health establishments designated in terms of section 5(1), determine the nature of the care, treatment and rehabilitation services to be provided at every establishment so designated. 15
- (4) A health establishment providing inpatient secondary level care and treatment may not admit a mental health care user for more than two months unless authorised by a mental health care practitioner in charge of that part of the health establishment. 20
- (5) Tertiary level mental health care, treatment and rehabilitation services may be provided at a tertiary health establishment or a psychiatric hospital designated in terms of section 5(1).
- (6) Psychiatric hospitals may admit, care for, treat and rehabilitate—
 - (a) voluntary mental health care users in special programmes; 25
 - (b) assisted mental health care users;
 - (c) involuntary mental health care users;
 - (d) State patients;
 - (e) mentally ill prisoners;
 - (f) persons referred by court for psychiatric observation in terms of the Criminal Procedure Act; and 30
 - (g) persons admitted for a long period as part of their care, treatment and rehabilitation.
- (7) Care and rehabilitation centres may—
 - (a) conduct assessments of intellectual abilities; and 35
 - (b) provide care, treatment and rehabilitation services to persons with severe or profound intellectual disabilities, including assisted and involuntary mental health care users.
- (8) Persons providing care, treatment and rehabilitation services must provide such services in a manner that facilitates community care of mental health care users. 40

CHAPTER III

RIGHTS AND DUTIES RELATING TO MENTAL HEALTH CARE USERS

Application of chapter

7. (1) The rights and duties of persons, bodies or institutions set out in this Chapter are in addition to any rights and duties that they may have in terms of any other law. 45
- (2) In exercising the rights and in performing the duties set out in this Chapter, regard must be had for what is in the best interests of the mental health care user.

Respect, human dignity and privacy

8. (1) The person, human dignity and privacy of every mental health care user must be respected. 50
- (2) Every mental health care user must be provided with care, treatment and rehabilitation services that improve the mental capacity of the user to develop to full potential and to facilitate his or her integration into community life.

(3) The care, treatment and rehabilitation services administered to a mental health care user must be proportionate to his or her mental health status and may intrude only as little as possible to give effect to the appropriate care, treatment and rehabilitation.

Consent to care, treatment and rehabilitation services and admission to health establishments

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9. (1) A health care provider or a health establishment may provide care, treatment and rehabilitation services to or admit a mental health care user only if—

- (a) the user has consented to the care, treatment and rehabilitation services or to admission;
- (b) authorised by a court order or a Review Board; or 10
- (c) due to mental illness, any delay in providing care, treatment and rehabilitation services or admission may result in the—
 - (i) death or irreversible harm to the health of the user;
 - (ii) user inflicting serious harm to himself or herself or others; or
 - (iii) user causing serious damage to or loss of property belonging to him or 15 her or others.

(2) Any person or health establishment that provides care, treatment and rehabilitation services to a mental health care user or admits the user in circumstances referred to in subsection (1)(c)—

- (a) must report this fact in writing in the prescribed manner to the relevant 20 Review Board; and
- (b) may not continue to provide care, treatment and rehabilitation services to the user concerned for longer than 24-hours unless an application in terms of Chapter V is made within the 24-hour period.

Unfair discrimination

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10. (1) A mental health care user may not be unfairly discriminated against on the grounds of his or her mental health status.

(2) Every mental health care user must receive care, treatment and rehabilitation services according to standards equivalent to those applicable to any other health care user. 30

(3) Policies and programmes aimed at promoting the mental health status of a person must be implemented with regard to the mental capacity of the person concerned.

Exploitation and abuse

11. (1) Every person, body, organisation or health establishment providing care, treatment and rehabilitation services to a mental health care user must take steps to 35 ensure that—

- (a) users are protected from exploitation, abuse and any degrading treatment;
- (b) users are not subjected to forced labour; and
- (c) care, treatment and rehabilitation services are not used as punishment or for 40 the convenience of other people.

(2) A person witnessing any form of abuse set out in subsection (1) against a mental health care user must report this fact in the prescribed manner.

Determinations concerning mental health status

12. (1) Any determination concerning the mental health status of any person must be based on factors exclusively relevant to that person's mental health status or, for the 45 purposes of giving effect to the Criminal Procedure Act, and not on socio-political or economic status, cultural or religious background or affinity.

(2) A determination concerning the mental health status of a user may only be made or referred to for purposes directly relevant to the mental health status of that user.

Disclosure of information

13. (1) A person or health establishment may not disclose any information which a mental health care user is entitled to keep confidential in terms of any other law.

(2) Despite subsection (1), the head of the national department, a head of provincial department or the head of a health establishment concerned may disclose such information if failure to do so would seriously prejudice the health of the mental health care user or of other people. 5

(3) A mental health care provider may temporarily deny mental health care users access to information contained in their health records, if disclosure of that information is likely to— 10

- (a) seriously prejudice the user; or
- (b) cause the user to conduct himself or herself in a manner that may seriously prejudice him or her or the health of other people.

Limitation on intimate adult relationships

14. Subject to conditions applicable to providing care, treatment and rehabilitation services in health establishments, the head of a health establishment may limit intimate relationships of adult mental health care users only if due to mental illness, the ability of the user to consent is diminished. 15

Right to representation

15. (1) A mental health care user is entitled to a representative, including a legal representative, when— 20

- (a) submitting an application;
- (b) lodging an appeal; or
- (c) appearing before a magistrate, judge or a Review Board, subject to the laws governing rights of appearances at a court of law. 25

(2) An indigent mental health care user is entitled to legal aid provided by the State in respect of any proceeding instituted or conducted in terms of this Act subject to any condition fixed in terms of section 3(d) of the Legal Aid Act, 1969 (Act No. 22 of 1969).

Discharge reports

16. The head of a health establishment must, in a prescribed form, issue a discharge report to the user who was admitted for purposes of receiving care, treatment and rehabilitation services. 30

Knowledge of rights

17. Every health care provider must, before administering any care, treatment and rehabilitation services, inform a mental health care user in an appropriate manner of his or her rights, unless the user has been admitted under circumstances referred to in section 9(1)(c). 35

CHAPTER IV

MENTAL HEALTH REVIEW BOARDS

Establishment

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18. (1) A member of the Executive Council responsible for health services in a province must, after consultation with the head of the provincial department concerned, establish a Review Board in respect of every health establishment providing mental health care, treatment and rehabilitation services in that province.

(2) The Review Board referred to in subsection (1) may be established for a single, a cluster or all health establishments providing mental health care services in that province. 45

(3) The relevant provincial department must, subject to the laws governing public service—

- (a) appoint, second or designate persons in its employ; and
 - (b) make available other resources,
- to the Review Board to enable it to perform its administrative functions.

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Powers and functions of Review Board

19. (1) The Review Board must—

- (a) consider appeals against decisions of the head of a health establishment;
- (b) make decisions with regard to assisted or involuntary mental health care, treatment and rehabilitation services;
- (c) consider reviews and make decisions on assisted or involuntary mental health care users;
- (d) consider 72-hours assessment made by the head of the health establishment and make decisions to provide further involuntary care, treatment and rehabilitation;
- (e) consider applications for transfer of mental health care users to maximum security facilities; and
- (f) consider periodic reports on the mental health status of mentally ill prisoners.

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(2) The Review Board may, when performing its functions, consult or obtain representations from any person, including a person or body with expertise.

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Composition of Review Board

20. (1) The Review Board consists of no fewer than three persons and no more than five persons who are South African citizens appointed by the relevant member of the Executive Council in each province.

(2) The Review Board must at least consist of a—

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- (a) mental health care practitioner;
- (b) magistrate, an attorney or an advocate admitted in terms of the law of the Republic; and
- (c) member of the community concerned.

(3) Before appointing any person referred to in subsection (1), the relevant member of the Executive Council must—

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- (a) by notice in the *Provincial Gazette*, and any other widely circulated means of communication in that Province call for nominees and state the criteria for such nominations;
- (b) specify a period within which nominations must be submitted; and
- (c) consider all nominations and make an appointment.

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(4) (a) The relevant member of the Executive Council must determine the term of office of members appointed under subsection (3).

(b) Such term of office may be staggered.

Removal

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21. (1) A member of the Review Board may at any time be removed from office by the relevant member of the Executive Council on account of—

- (a) ceasing to practise the profession in terms of which he or she was appointed;
- (b) inability to perform his or her duties effectively;
- (c) absence from two consecutive meetings of the Review Board without prior permission, except on good cause shown;
- (d) ceasing to be a South African citizen; or
- (e) public interest.

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(2) A member may not be removed from office except after an enquiry.

Vacancies

- 22.** (1) A vacancy in the Review Board occurs if a member of the Review Board—
- (a) upon at least one month's written notice tenders his or her resignation to the relevant member of the Executive Council;
 - (b) is removed from office in terms of section 21; or
 - (c) dies or becomes incapable of doing his or her work for a consecutive period of six months.
- (2) When a vacancy in the Review Board has arisen as referred to in subsection (1) for appointing members of the Review Board, the procedure referred to in section 20(3) applies.
- (3) A decision taken by the Review Board is not invalid only by reason of a casual vacancy in the Review Board when such decision was taken.

Remuneration

- 23.** (1) The relevant member of the Executive Council may with the concurrence of the member of the Executive Council responsible for finance determine the remuneration, travelling expenses, subsistence allowance and other allowances to be paid to the member of the Review Board who is not in the full-time employment of the State.
- (2) The remuneration, travelling expenses, subsistence allowances and other allowances referred to in subsection (1) must be appropriated out of the monies of the relevant Provincial legislature.

Procedures of Review Board

- 24.** (1) A Review Board may determine its own procedures for conducting business.
- (2) (a) The relevant member of the Executive Council must designate one of the members of the Review Board as chairperson to preside at the meetings of the Review Board.
- (b) Members of the Review Board may determine the procedure for appointing an acting chairperson if the chairperson is not able to preside over a meeting of the Review Board.
- (3) Whenever a Review Board is considering a matter that involves a health establishment at which one of the members of the Review Board is a mental health care practitioner, that practitioner may not be involved in the consideration of the matter.

CHAPTER V

VOLUNTARY, ASSISTED AND INVOLUNTARY MENTAL HEALTH CARE

Voluntary care, treatment and rehabilitation services

- 25.** A mental health care user who submits voluntarily to a health establishment for care, treatment and rehabilitation services, is entitled to appropriate care, treatment and rehabilitation services or to be referred to an appropriate health establishment.

Care, treatment and rehabilitation services for mental health care users incapable of making informed decisions

- 26.** Subject to section 9(1)(c), a mental health care user may not be provided with assisted care, treatment and rehabilitation services at a health establishment as an outpatient or inpatient without his or her consent, unless—
- (a) a written application for care, treatment and rehabilitation services is made to the head of the health establishment concerned and he or she approves it; and
 - (b) at the time of making the application—
 - (i) there is a reasonable belief that the mental health care user is suffering from a mental illness or severe or profound mental disability, and requires care, treatment and rehabilitation services for his or her health or safety, or for the health and safety of other people; and

- (ii) the mental health care user is incapable of making an informed decision on the need for the care, treatment and rehabilitation services.

Application for assisted care, treatment and rehabilitation services

- 27.** (1) (a) An application referred to in section 26 may only be made by the spouse, next of kin, partner, associate, parent or guardian of a mental health care user, but where the— 5
- (i) user is below the age of 18 years on the date of the application, the application must be made by the parent or guardian of the user; or
 - (ii) spouse, next of kin, partner, associate, parent or guardian of the user is unwilling, incapable or not available to make such an application, the application may be made by a health care provider. 10
- (b) The applicants referred to in paragraph (a) must have seen the mental health care user within seven days before making the application.
- (2) Such application must be made in the prescribed manner, and must— 15
- (a) set out the relationship of the applicant to the mental health care user;
 - (b) if the applicant is a health care provider, state—
 - (i) the reasons why he or she is making the application; and
 - (ii) what steps were taken to locate the relatives of the user in order to determine their capability or availability to make the application;
 - (c) set out grounds on which the applicant believes that care, treatment and rehabilitation services are required; and 20
 - (d) state the date, time and place where the user was last seen by the applicant within seven days before the application is made.
- (3) An application referred to in subsection (1) may be withdrawn at any time.
- (4) (a) On receipt of the application, the head of a health establishment concerned must cause the mental health care user to be examined by two mental health care practitioners. 25
- (b) Such mental health care practitioners must not be the persons making the application and at least one of them must be qualified to conduct physical examinations.
- (5) On completion of the examination referred to in subsection (4), the mental health care practitioners must submit their written findings to the head of the health establishment concerned on whether the— 30
- (a) circumstances referred to in section 26(b) are applicable; and
 - (b) mental health care user should receive assisted care, treatment and rehabilitation services as an outpatient or inpatient. 35
- (6) (a) If the findings of the two mental health care practitioners differ, the head of the health establishment concerned must cause the mental health care user to be examined by another mental health care practitioner.
- (b) That mental health care practitioner must, on completion of such examination, in writing, submit a report on the aspects referred to in subsection (5). 40
- (7) The head of the health establishment may only approve the application if the findings of two of the mental health care practitioners referred to in subsection (4) or (6) concur that conditions for assisted care, treatment and rehabilitation exist.
- (8) The head of the health establishment may only approve assisted care, treatment and rehabilitation of a prospective user as an inpatient if— 45
- (a) the findings of two mental health care practitioners concur that conditions for inpatient care, treatment and rehabilitation exist; and
 - (b) satisfied that the restrictions and intrusions on the rights of the mental health care user to movement, privacy and dignity are proportionate to the care, treatment and rehabilitation services required. 50
- (9) If satisfied, the head of the health establishment must give written notice to the applicant of his or her decision concerning assisted care, treatment and rehabilitation in question and reasons thereof.
- (10) If the head of the health establishment approves the application for inpatient assisted care, treatment and rehabilitation services, he or she must, within five days, cause the mental health care user to be admitted to that health establishment or to be referred to another health establishment with appropriate facilities. 55

Initial review of assisted mental health care user by Review Board

28. (1) The head of the health establishment concerned must, within seven days of his or her decision made under section 27(9), send a copy of the application to the relevant Review Board together with a confirmation of his or her decision.

(2) Within 30 days of receipt of the documents referred to in subsection (1), the Review Board must conduct an investigation into the— 5

- (a) incapacity of the mental health care user to make an informed decision on the need for the assisted care, treatment and rehabilitation services; and
- (b) circumstances under which the mental health care user is receiving care, treatment and rehabilitation services. 10

(3) On completion of the investigation, the Review Board must—

- (a) request the head of the health establishment to—
 - (i) continue providing the mental health care user with the appropriate care, treatment and rehabilitation services; or
 - (ii) discharge the mental health care user according to accepted clinical practice; and 15
- (b) report on its findings and the steps taken to the head of the relevant provincial department.

(4) If at any stage before the completion of the investigation, an appeal is lodged in terms of section 29, the Review Board must stop the investigation and consider the appeal in question. 20

Appeal against decision of head of health establishment to approve application for assisted care, treatment and rehabilitation

29. (1) (a) A mental health care user, spouse, next of kin, partner, associate, parent or guardian may, within 30 days of the date of the written notice issued in terms of section 27(9), appeal against the decision of the head of the health establishment to the Review Board. 25

(b) Such an appeal must contain the facts and the grounds upon which the appeal is based.

(2) Within 30 days after receipt of the appeal, the Review Board must— 30

- (a) consider the appeal in the prescribed manner;
- (b) provide the appellant, applicant, the relevant mental health care practitioners and the head of the health establishment concerned an opportunity to make oral or written representations on the merits of the appeal; and
- (c) send a written notice of its decision together with reasons for such decision to the appellant, applicant, head of the health establishment in question and the relevant mental health care practitioner. 35

(3) If the Review Board upholds an appeal, all care, treatment and rehabilitation services administered to a mental health care user must be stopped according to accepted clinical practices and the user, if admitted, must be discharged by the health establishment, unless the user consents to the care, treatment and rehabilitation services. 40

Periodic review and annual reports on assisted health care users

30. (1) Six months after the commencement of care, treatment and rehabilitation services, and every 12 months thereafter, the head of the health establishment concerned must cause the mental health status of an assisted mental health care user to be reviewed. 45

(2) Such review must—

- (a) state the capacity of the mental health care user to express himself or herself on the need for care, treatment and rehabilitation services;
- (b) state whether there are other care, treatment and rehabilitation services that are less restrictive or intrusive on the right to movement, privacy and dignity of the user; and 50
- (c) make recommendations regarding a plan for further care, treatment and rehabilitation services.

(3) A summary report of the review must be submitted to the Review Board.

(4) Within 30 days after receipt of the report, the Review Board— 55

- (a) may consult with any person who may have information concerning the mental health status of the user;
 - (b) must decide on the review; and
 - (c) must send a written notice of its decision and the reasons thereof to the mental health care user in question, applicant concerned, head of the health establishment where the user is admitted and the head of the relevant provincial department. 5
- (5) (a) If the Review Board concerned decides to discharge the assisted mental health care user—
- (i) all care, treatment and rehabilitation services must be stopped according to accepted clinical practices; and 10
 - (ii) if admitted, the user must be discharged from the relevant health establishment, 15
- unless the user consents to the care, treatment and rehabilitation services.
- (b) The head of the health establishment concerned must comply with the decision of the Review Board. 15

Recovery of capacity of assisted mental health care users to make informed decisions

31. (1) If the head of a health establishment, at any stage after approving an application for assisted care, treatment and rehabilitation services, has reason to believe from personal observation, from information obtained or on receipt of representations by the user that an assisted mental health care user has recovered the capacity to make informed decisions, he or she must enquire from the user whether the user is willing to voluntarily continue with care, treatment and rehabilitation services. 20
- (2) If the assisted mental health care user consents to further care, treatment and rehabilitation services, section 25 applies. 25
- (3) If the assisted mental health care user is unwilling to continue with care, treatment and rehabilitation services, and the head of the health establishment is satisfied that the user is—
- (a) no longer suffering from the mental illness or mental disability referred to in section 26(b), the head of the health establishment concerned must immediately cause the user to be discharged according to accepted clinical practices; 30
 - or
 - (b) still suffering from the mental illness or mental disability referred to in section 26(b), the head of the health establishment concerned must, in writing, inform the— 35
- (i) person who made the application in terms of section 27; and
 - (ii) mental health care practitioner, registered social worker or nurse administering care, treatment and rehabilitation services to that mental health care user. 40
- (4) The head of the health establishment must advise the persons referred to in subsection (3)(b) that they may make an application within 30 days of receipt of such report to the head of the relevant health establishment to provide involuntary care, treatment and rehabilitation services to the user and that sections 32 and 33 apply.
- (5) If the application is not made within 30 days, the assisted mental health care user must be discharged. 45

Care, treatment and rehabilitation of mental health care users without consent

32. A mental health care user must be provided with care, treatment and rehabilitation services without his or her consent at a health establishment on an outpatient or inpatient basis if— 50
- (a) an application in writing is made to the head of the health establishment concerned to obtain the necessary care, treatment and rehabilitation services and the application is granted;
 - (b) at the time of making the application, there is reasonable belief that the mental health care user has a mental illness of such a nature that— 55

- (i) the user is likely to inflict serious harm to himself or herself or others; or
- (ii) care, treatment and rehabilitation of the user is necessary for the protection of the financial interests or reputation of the user; and
- (c) at the time of the application the mental health care user is incapable of making an informed decision on the need for the care, treatment and rehabilitation services and is unwilling to receive the care, treatment and rehabilitation required. 5

Application to obtain involuntary care, treatment and rehabilitation

33. (1) (a) An application for involuntary care, treatment and rehabilitation services may only be made by the spouse, next of kin, partner, associate, parent or guardian of a mental health care user, but where the— 10

- (i) user is below the age of 18 years on the date of the application, the application must be made by the parent or guardian of the user; or
- (ii) spouse, next of kin, partner, associate, parent or guardian of the user is unwilling, incapable or is not available to make such application, the application may be made by a health care provider. 15

(b) The applicants referred to in paragraph (a) must have seen the mental health care user within seven days before making the application.

(2) Such application must be made in the prescribed manner, and must—

- (a) set out the relationship of the applicant to the mental health care user; 20
- (b) if the applicant is a health care provider, state—
 - (i) the reasons why the application is made by him or her; and
 - (ii) what steps were taken to locate the relatives of the user to determine their capability or availability to make the application;
- (c) set out grounds on which the applicant believes that care, treatment and rehabilitation are required; and 25
- (d) state the date, time and place where the user was last seen by the applicant within seven days before making the application.

(3) An application referred to in subsection (1) may be withdrawn at any time.

(4) (a) On receipt of the application, the head of the health establishment concerned must cause the mental health care user to be examined by two mental health care practitioners. 30

(b) Such mental health care practitioners must not be the person making the application and at least one of them must be qualified to conduct physical examinations.

(5) On completion of the examination the mental health care practitioners must submit to the head of the health establishment their written findings on whether the— 35

- (a) circumstances referred to in section 32(b) and (c) are applicable; and
- (b) mental health care user must receive involuntary care, treatment and rehabilitation services.

(6) (a) If the findings of the two mental health care practitioners differ, the head of the health establishment concerned must cause the mental health care user to be examined by another mental health care practitioner. 40

(b) That mental health care practitioner must, on completion of such examination submit a written report on the aspects referred to in subsection (5).

(7) The head of the health establishment may only approve the application if the findings of two of the mental health care practitioners referred to in subsection (4) or (6) concur that conditions for involuntary care, treatment and rehabilitation exist. 45

(8) The head of the health establishment must, in writing, inform the applicant and give reasons on whether to provide involuntary care, treatment and rehabilitation services. 50

(9) If the head of the health establishment approves involuntary care, treatment and rehabilitation services, he or she must—

- (a) within 48 hours cause the mental health care user to be admitted to that health establishment; or
- (b) with the concurrence of the head of any other health establishment with the appropriate facilities, refer the user to that health establishment.

72-Hour assessment and subsequent provision of further involuntary care, treatment and rehabilitation 5

34. (1) If the head of the health establishment grants the application for involuntary care, treatment and rehabilitation services, he or she must—

- (a) ensure that the user is given appropriate care, treatment and rehabilitation services; 10
- (b) admit the user and request a medical practitioner and another mental health care practitioner to assess the physical and mental health status of the user for a period of 72 hours in the manner prescribed; and
- (c) ensure that the practitioners also consider whether— 15
 - (i) the involuntary care, treatment and rehabilitation services must be continued; and
 - (ii) such care, treatment and rehabilitation services must be provided on an outpatient or inpatient basis.

(2) The head of the health establishment must, within 24 hours after the expiry of the 72-hour assessment period make available the findings of the assessment to the applicant. 20

(3) If the head of the health establishment following the assessment, is of the opinion that the mental health status of the mental health care user—

- (a) does not warrant involuntary care, treatment and rehabilitation services, the user must be discharged immediately, unless the user consents to the care, treatment and rehabilitation services; or 25
- (b) warrants further involuntary care, treatment and rehabilitation services on an outpatient basis, he or she must—
 - (i) discharge the user subject to the prescribed conditions or procedures relating to his or her outpatient care, treatment and rehabilitation services; and 30
 - (ii) in writing, inform the Review Board.
- (c) warrants further involuntary care, treatment and rehabilitation services on an inpatient basis, the head of the health establishment must—
 - (i) within seven days after the expiry of the 72-hour assessment period submit a written request to the Review Board to approve further involuntary care, treatment and rehabilitation services on an inpatient basis containing— 35
 - (aa) a copy of the application referred to in section 33;
 - (bb) a copy of the notice given in terms of section 33(8); 40
 - (cc) a copy of the assessment findings; and
 - (dd) the basis for the request; and
 - (ii) give notice to the applicant of the date on which the relevant documents were submitted to the Review Board.

(4) If the mental health care user is to be cared for, treated and rehabilitated on an inpatient basis and the user has been admitted to a health establishment which is— 45

- (a) a psychiatric hospital, that hospital must keep, care for, treat and rehabilitate the user; or
- (b) not a psychiatric hospital, that user must be transferred to a psychiatric hospital for care, treatment and rehabilitation services, 50

until the Review Board makes its decision.

(5) If at any time after the expiry of the 72-hour assessment period, the head of the health establishment is of the opinion that the user who was admitted on an involuntary inpatient basis is fit to be an outpatient, he or she must—

- (a) discharge the user according to the prescribed conditions or procedures; and 55
- (b) inform the Review Board in writing.

(6) The head of the health establishment may cancel the discharge and request the user to return to the health establishment on an involuntary inpatient basis, if he or she has reason to believe that the user fails to comply with the terms and conditions of such discharge. 60

(7) The Review Board must, within 30 days of receipt of documents referred to in subsection (3)(c)(i)—

- (a) consider the request in the prescribed manner, and give the applicant, mental health care practitioners referred to in section 33 or an independent mental health care practitioner, if any, and the head of the health establishment an opportunity to make oral or written representations on the merits of the request; 5
- (b) send a decision in writing with reasons to the applicant and the head of the health establishment; and
- (c) if the Review Board decides to grant the request, submit to the Registrar of a High Court the documents referred to in subsection (3)(c)(i) and the written notice for consideration by a High Court. 10

(8) If at any stage before making a decision on further involuntary care, treatment and rehabilitation services on an inpatient basis, an appeal is lodged against the decision of the head of the health establishment in terms of section 35, the Review Board must stop the review proceedings and consider the appeal. 15

Appeal against decision of head of health establishment on involuntary care, treatment and rehabilitation

35. (1) (a) A mental health care user, or the spouse, next of kin, partner, associate, parent or guardian of the mental health care user may, within 30 days of the date of the written notice issued in terms of section 33(8), appeal against the decision of head of the health establishment to the Review Board. 20

(b) Such an appeal must contain the facts and the grounds on which the appeal is based.

(2) Within 30 days after receipt of the notice of appeal, the Review Board must— 25

- (a) obtain from the head of the health establishment concerned, a copy of the application made in terms of section 33, notice given in terms of section 33(8) and a copy of the findings of the assessment conducted in terms of section 34(1), if applicable;
- (b) give the appellant, applicant, mental health practitioners referred to in section 33, an independent mental health care practitioner, if any, and the head of the health establishment concerned an opportunity to make written or oral representations on the merits of the appeal. 30
- (c) consider the appeal in the prescribed manner; and
- (d) send a written notice of its decision and the reasons for such decision to the appellant, applicant, the head of the health establishment concerned and head of the relevant provincial department. 35

(3) If the Review Board upholds the appeal—

- (a) all care, treatment and rehabilitation services administered to the mental health care user must be stopped according to accepted clinical practices; and 40
- (b) the user, if admitted, must be discharged by the head of the health establishment, unless the user consents to the care, treatment and rehabilitation services.

(4) If the Review Board does not uphold the appeal, it must submit the documents referred to in subsection (2)(a) and (d) to the Registrar of a High Court for the review by the High Court. 45

Judicial review on need for further involuntary care, treatment and rehabilitation services

36. Within 30 days after receipt of the documents submitted by the Review Board in terms of section 34(7) or 35(4), the High Court— 50

- (a) must consider information submitted and any other representations made by any person referred to in section 35(1);
- (b) may obtain information from any relevant person; and
- (c) must thereafter order—

- (i) further hospitalisation of the mental health care user and, if necessary, the financial affairs of the mental health care user be managed and administered according to the provisions of Chapter VIII; or
- (ii) immediate discharge of the mental health care user.

Periodic review and annual reports on involuntary mental health care users 5

37. (1) Six months after the commencement of care, treatment and rehabilitation services, and every 12 months thereafter, the head of the health establishment concerned must cause the mental health status of an involuntary mental health care user to be reviewed.

- (2) Such review must— 10
 - (a) state the capacity of the mental health care user to express himself or herself on the need for care, treatment and rehabilitation services;
 - (b) state whether the mental health care user is likely to inflict serious harm on himself or herself or other people;
 - (c) state whether there is other care, treatment and rehabilitation services that are less restrictive or intrusive on the right of the mental health care user to movement, privacy and dignity; and 15
 - (d) make recommendations regarding a plan for further care, treatment or rehabilitation service.
- (3) The head of the health establishment must submit a summary report of the review to the Review Board. 20
- (4) Within 30 days after receipt of the report, the Review Board must—
 - (a) consider the report including obtaining information from any relevant person; and
 - (b) send a written notice of its decision to the mental health care user, applicant, head of the health establishment concerned and head of the provincial department stating the reasons for the decision. 25
- (5) (a) If the Review Board decides that the involuntary mental health care user be discharged—
 - (i) all care, treatment and rehabilitation services administered to the user must be stopped according to accepted clinical practices; and 30
 - (ii) the user, if admitted, must be discharged by the health establishment concerned, unless the user consents to the care, treatment and rehabilitation services.
- (b) The head of the health establishment must comply with the decision of the Review Board. 35
- (6) The Registrar of the High Court must be notified in writing of a discharge made in terms of this section.

Recovery of capacity of involuntary mental health care users to make informed decisions 40

- 38. (1) If the head of a health establishment is of the opinion from personal observation, information obtained or on receipt of representations by the user, that an involuntary mental health care user is capable of making informed decisions, he or she must enquire from the user whether the user is willing to voluntarily continue with the care, treatment and rehabilitation services. 45
- (2) If the involuntary mental health care user consents to further care, treatment and rehabilitation services, section 25 applies.
- (3) If the involuntary mental health care user is unwilling to continue with care, treatment and rehabilitation services and the head of the health establishment is satisfied that the user no longer has a mental illness as referred to in section 32(b), the head of the health establishment concerned must immediately cause the user to be discharged according to accepted clinical practices. 50

Transfer of mental health care users to maximum security facilities

- 39. (1) The head of a health establishment may submit a request in writing to the

relevant Review Board for an order for transfer of an assisted or involuntary mental health care user to a health establishment with maximum security facilities if the user has—

- (a) previously absconded or attempted to abscond; or
- (b) inflicted or is likely to inflict harm on others in the health establishment. 5
- (2) The head of the health establishment must submit a copy of the report to the applicant to enable the applicant to submit representations to the Review Board on the merits of the transfer.
- (3) The Review Board must not approve the request—
 - (a) in order to punish the mental health care user concerned; or 10
 - (b) if not satisfied that the mental health status of the user warrants a transfer to maximum security facilities.
- (4) If the Review Board approves the request it must forward a copy of the order concerned to the head of the health establishment and the head of the relevant provincial department. 15
- (5) Within 14 days of receipt of the order, the head of the provincial department concerned must make the necessary arrangements with the appropriate health establishment and effect the transfer as ordered.
- (6) The head of a health establishment may, with the concurrence of the head of the health establishment with maximum security facilities, effect transfer pending the decision of the Review Board if the conduct of the mental health care user has or is likely to give rise to an emergency. 20

Intervention by members of South African Police Service

- 40. (1) If a member of the South African Police Service has reason to believe, from personal observation or from information obtained from a mental health care practitioner, that a person due to his or her mental illness or severe or profound intellectual disability is likely to inflict serious harm to himself or herself or others, the member must apprehend the person and cause that person to be— 25
 - (a) taken to an appropriate health establishment administered under the auspices of the State for assessment of the mental health status of that person; and 30
 - (b) handed over into custody of the head of the health establishment or any other person designated by the head of the health establishment to receive such persons.
- (2) If a mental health care practitioner, after the assessment referred to in subsection (1), is of the view that the person apprehended is— 35
 - (a) due to mental illness or severe or profound intellectual disability, likely to inflict serious harm to himself or herself or others, must admit the person to the health establishment for a period not exceeding 24 hours for an application to be made in terms of section 33; or
 - (b) unlikely to cause harm, he or she must release the person immediately. 40
- (3) If an application is not made within the 24 hour period, the person apprehended must be discharged immediately.
- (4) If an assisted or involuntary mental health care user has absconded or is deemed to have absconded or if the user has to be transferred under sections 27(10), 33(9), 34(4)(b), 34(6) and 39, the head of the health establishment may request assistance from the South African Police Service to— 45
 - (a) locate, apprehend and return the user to the health establishment concerned; or
 - (b) transfer the user in the prescribed manner.
- (5) The South African Police Service must comply with the request.
- (6) When requesting the assistance, the South African Police Service must be 50
 - informed of the estimated level of dangerousness of the assisted or involuntary mental health care user.
- (7) A person apprehended in terms of subsection (4) may be held in custody at a police station for such period as prescribed to effect the return or the transfer in the prescribed manner. 55

(8) A member of the South African Police Service, may use such constraining measures as may be necessary and proportionate in the circumstances when apprehending a person or performing any function in terms of this section.

CHAPTER VI

STATE PATIENTS

5

Designation of health establishments for State patients

41. The head of the national department must, with the concurrence of the relevant heads of the provincial departments, designate health establishments which may admit, care for, treat and provide rehabilitation services to State patients.

Admission of State patients to designated health establishments

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42. (1) Where a court issues an order in terms of the Criminal Procedure Act for a State patient to be admitted for mental health care, treatment and rehabilitation services, the Registrar or the Clerk of the court must send a copy of that order to the—

- (a) relevant official *curator ad litem*; and
- (b) officer in charge of the detention centre where the State patient is or will be detained. 15

(2) The officer in charge of the detention centre must forward a copy of the order in question to the head of the national department within 14 days, requesting that the State patient be transferred to a health establishment designated in terms of section 41.

(3) The head of the national department must immediately after receipt of the order— 20

- (a) determine the health establishment to which the State patient must be transferred;
 - (b) ensure that arrangements are made to effect the transfer of the State patient to the health establishment designated in terms of section 41; and
 - (c) in writing notify— 25
 - (i) the relevant official *curator ad litem*; and
 - (ii) the official in charge of the detention centre at which the State patient is detained.
- of the details of the transfer.

(4) Within 14 days of being notified of the details of the transfer, the officer in charge of the detention centre must cause the State patient to be transferred to the health establishment specified in the notice. 30

Transfer of State patients between designated health establishments

43. (1) Despite the determination by the head of the national department in terms of section 42(3)(a), a head of the relevant provincial department may thereafter transfer a State patient to another health establishment designated in terms of section 41 in— 35

- (a) the province which the head of the provincial department has jurisdiction; or
- (b) another province with the concurrence of the head of that other provincial department.

(2) Transfer may only be done if it is necessary for the care, treatment and rehabilitation of the State patient concerned. 40

(3) Despite the determination of the national department, a relevant Review Board may order the State patient to be transferred to another designated health establishment with maximum security facilities in terms of section 41.

(4) An order referred to in subsection (3) may only be given— 45

- (a) if the State patient has or is likely to inflict harm on others; and
- (b) on receipt of a written application from the head of the health establishment at which the State patient is detained setting out the facts on which the request is based.

(5) On issuing the order, the Review Board concerned must forward a copy of the order concerned to the head of the national department. 50

- (6) The head of the national department must within 14 days of receipt of the order—
- (a) determine the health establishment at which the State patient must be transferred to; and
 - (b) ensure that the necessary arrangements are made with the appropriate health establishment to effect the transfer as ordered. 5
- (7) The head of the health establishment may, with the consent of the head of the health establishment with maximum security facilities, effect the transfer pending the decision of the Review Board if the conduct of the State patient has or is likely to give rise to an emergency.
- (8) The person responsible for effecting a transfer in terms of this section must, in writing, notify the official *curator ad litem*. 10

State patients who abscond

44. (1) If a State patient has absconded or is deemed by the head of the relevant designated health establishment to have absconded, the head of that health establishment must, in writing— 15
- (a) immediately notify and request the South African Police Service to locate, apprehend and return the patient to the relevant health establish; and
 - (b) notify the Registrar or Clerk of the court concerned and the official *curator ad litem*, within 14 days of having notified the South African Police Service. 20
- (2) The South African Police Service must comply with the request. 20
- (3) If a State patient is considered dangerous, the head of the health establishment must notify the South African Police Service.
- (4) A State patient who is apprehended must be held in custody for such period as prescribed to effect the return.
- (5) A member of the South African Police Service may use such constraining measures as may be necessary and proportionate in the circumstances when apprehending any person or performing any function in terms of this section. 25

Leave of absence from designated health establishments

45. (1) The head of a health establishment may, in writing, grant leave of absence to a State patient from a designated health establishment. 30
- (2) Written notice of leave of absence must state the—
- (a) commencement and the return date of the State patient to the health establishment and must be submitted to the head of the national department; and
 - (b) terms and conditions to be complied with during the period of leave. 35
- (3) The head of the health establishment may, during the period of leave, if he or she has reason to believe that the State patient does not comply with the terms and conditions applicable to such leave, cancel the leave and direct as to when the State patient must return to the health establishment.
- (4) If the State patient fails to return to the health establishment on the return date, he or she will be deemed to have absconded. 40

Periodic review of mental health status of State patients

46. (1) The head of a health establishment where a State patient is admitted or if on leave of absence or conditional discharge must cause the mental health status of the State patient to be reviewed after six months from the date on which care, treatment and rehabilitation services were commenced, and every 12 months thereafter. 45
- (2) The review must make recommendations on—
- (a) a plan for further care, treatment and rehabilitation service;
 - (b) the merits of granting leave of absence; or
 - (c) the discharge of the State patient. 50
- (3) The head of the health establishment must submit a summary report of the review to the—
- (a) head of the national department;
 - (b) official *curator ad litem*; and

- (c) administrator, if appointed.
- (4) Within 30 days after receipt of the report, the head of the national department—
 - (a) may consult with any person who has information concerning the mental status of the State patient concerned;
 - (b) must make written recommendations regarding the issues referred to in subsection (2); and
 - (c) must send the written recommendation and reasons to the head of the health establishment concerned.

Application for discharge of State patients

47. (1) Any of the following persons may apply to a judge in chambers for the discharge of a State patient:

- (a) The State patient;
- (b) an official *curator ad litem*;
- (c) an administrator, if appointed;
- (d) the head of the health establishment at which a State patient is admitted;
- (e) the medical practitioner responsible for administering care, treatment and rehabilitation services to a State patient;
- (f) a spouse, an associate or a next of kin of a State patient; or
- (g) any other person authorised to act on behalf of a State patient.
- (2) Such an application must be in a prescribed form and contain—
 - (a) reasons for the application;
 - (b) a report by a psychologist, if the State patient has been assessed by such a person;
 - (c) where the applicant is an official *curator ad litem* or an administrator, a report containing a history and a prognosis of a mental health status of the State patient from—
 - (i) the head of the health establishment where the State patient is admitted; and
 - (ii) two mental health practitioners and one of whom must be a psychiatrist;
 - (d) details of any application made for the discharge of the State patient within 12 months before the application in question;
 - (e) in the case where the applicant is not an official *curator ad litem* or administrator, an indication of whether the current curators may have a conflict of interest with the State patient and supply proof that a copy of the application has been given to the curators concerned;
 - (f) in the case where the applicant is an associate or the person referred to in paragraph (e), the nature of the substantial or material interest or the nature of the conflict, if any; and
 - (g) any information relevant to the application held by the applicant.
- (3) The Registrar of the High Court must submit a copy of the application to an official *curator ad litem*, where the applicant is not an official *curator ad litem*. The official *curator ad litem* must within 30 days of receipt of the application, submit a written report to the judge in chambers and such report must—
 - (a) set out and contain a history and a prognosis of the mental health status of the State patient from—
 - (i) the head of the designated health establishment at which the State patient has been admitted; and
 - (ii) two mental health practitioners and one of whom must be a psychiatrist;
 - (b) contain a report from a psychologist if the State patient has been assessed by such a person;
 - (c) indicate whether another application was made for the discharge of the State patient concerned within a period of 12 months and the status of such application; and
 - (d) make recommendations on whether the application should be granted and the basis for the recommendation.
- (4) On considering the application, the judge in chambers—

- (a) must establish whether another application for the discharge of the State patient concerned is pending or had been considered within a period of 12 months, in which case, the application referred to in subsection (3) must be dismissed;
 - (b) must establish whether the official *curator ad litem* has a conflict of interest with the State patient, in which case a legal practitioner must be appointed to assist in the processing of the present application; and
 - (c) may call for further information and assistance from the applicant, mental health practitioner or a relevant curator, as may be necessary to process the application.
- (5) The legal practitioner appointed in terms of subsection 4(b) must—
- (a) adduce any available evidence relevant to the application;
 - (b) perform the functions and duties as required by the judge in chambers concerned to process the application; and
 - (c) be remunerated by the national department responsible for justice and constitutional development according to the tariffs and scale of benefits and allowances determined for this purpose by the member of Cabinet responsible for justice and constitutional development.
- (6) On considering the application, the judge in chambers may order that the State patient—
- (a) remain a State patient;
 - (b) be reclassified and dealt with as a voluntary, assisted or involuntary mental health care user in terms of Chapter V;
 - (c) be discharged unconditionally; or
 - (d) be discharged conditionally.
- (7) For the purposes of this section “legal practitioner” means an attorney or an advocate who has a right of appearance in a High Court.

Conditional discharge of State patients, amendments to conditions or revocation of conditional discharge

48. (1) Where a State patient is discharged conditionally in terms of section 47(6)(d), such an order must specify the terms and conditions of the discharge and the period of the conditional discharge.
- (2) The head of the health establishment from which the State patient was conditionally discharged must—
- (a) cause the mental health status of the State patient to be monitored at that health establishment; or
 - (b) arrange for another health establishment to monitor the State patient, if the conditional discharge requires the State patient to present him or herself at that health establishment for care, treatment and rehabilitation services.
- (3) The person monitoring the State patient must submit a written report to the head of the health establishment at which the State patient was discharged—
- (a) relating to any terms and conditions applicable to the discharge;
 - (b) at the end of every six months from the date on which the conditional discharge order was made; and
 - (c) at the end of the conditional discharge period.
- (4) If at the end of the conditional discharge, the head of the health establishment is satisfied that the State patient has fully complied with the terms and conditions applicable to the discharge, and that the mental health status of the State patient has not deteriorated, the head of that health establishment must—
- (a) immediately discharge the State patient unconditionally; and
 - (b) in writing, inform the State patient, the Registrar concerned and the official *curator ad litem*.
- (5) If after considering any report submitted in terms of subsection (3), the head of the health establishment has reason to believe that the—
- (a) State patient has not fully complied with the terms and conditions applicable to the discharge; or
 - (b) mental health status of the State patient has deteriorated,
- the head of the health establishment may apply to the Registrar of the High Court concerned for an order amending the conditions or revoking the conditional discharge, and forward a copy of the application to the official *curator ad litem*.

(6) A State patient who has been discharged conditionally may at any time after six months from the date on which the order was made, and thereafter, at no less than six months intervals, apply in the prescribed manner to the judge in chambers concerned for an—

- (a) amendment of any condition applicable to the discharge; or 5
- (b) unconditional discharge.

(7) The application referred to in subsection (6), must set out the—

- (a) condition to be amended;
- (b) duration of such amendment; and
- (c) reasons for the amendment or revocation of the conditional discharge. 10

CHAPTER VII

MENTALLY ILL PRISONERS

Designation of health establishments for prisoners who are mentally ill

49. The head of the national department must, with the concurrence of the heads of the provincial departments, designate health establishments which may admit, care for, treat 15 and provide rehabilitation services to mentally ill prisoners.

Enquiry into mental health status of prisoner

50. (1) If it appears to the head of a prison through personal observation or from information provided that a prisoner may be mentally ill, the head of the prison must cause the mental health status of the prisoner to be enquired into by— 20

- (a) a psychiatrist; or
- (b) where a psychiatrist is not readily available, by—
 - (i) a medical practitioner; and
 - (ii) a mental health care practitioner.

(2) The person conducting the enquiry must submit a written report to the head of the 25 prison, and must specify in the report—

- (a) the mental health status of the prisoner; and
- (b) a plan for the care, treatment and rehabilitation of that prisoner.

Care, treatment and rehabilitation of prisoners with mental illnesses in prison

51. If the person conducting the enquiry referred to in section 50, finds that the mental 30 illness of the convicted prisoner is of such a nature that the prisoner concerned could appropriately be cared for, treated and rehabilitated in the prison, the head of the prison must take the necessary steps to ensure that the required levels of care, treatment and rehabilitation services are provided to that prisoner.

Magisterial enquiry concerning transfer to designated health establishments 35

52. (1) If the person conducting the enquiry referred to in section 50, finds that the mental illness of the convicted prisoner is of such a nature that the prisoner concerned ought to be cared for and treated in a health establishment designated in terms of section 49, the head of the prison must request a magistrate to cause a subsequent enquiry to be conducted into the mental health status of the prisoner as to whether a transfer to a health 40 establishment designated in terms of section 49 would be appropriate.

(2) The magistrate must commission two mental health care practitioners of whom at least one must be a psychiatrist, psychologist or medical practitioner with special training in mental health to enquire into the mental health status of the prisoner concerned and to make recommendations on whether the prisoner concerned should be 45 transferred to a health establishment designated in terms of section 49.

(3) If the mental health care practitioners recommend that—

- (a) the prisoner should be cared for, treated and rehabilitated at a health establishment designated in terms of section 49, the magistrate must issue a written order to the head of the prison to transfer the prisoner concerned to that 50 health establishment according to the procedure set out in section 54; or

- (b) the prisoner need not be cared for and treated in a health establishment designated in terms of section 49, but instead be cared for and treated in the prison in which the convicted prisoner is in custody, the magistrate must issue a written order to the head of the prison to take the necessary steps to ensure that the required levels of care and treatment are provided to the prisoner concerned. 5

Procedure to transfer mentally ill prisoners to designated health establishments

53. (1) On receipt of a written order referred to in section 52(3)(a), the head of the prison concerned must forward a copy of the order to—

- (a) the administrator, if appointed; and 10
- (b) the head of the national department, together with a request that the mentally ill prisoner be transferred to a health establishment designated in terms of section 49.

(2) The head of the national department must immediately—

- (a) determine the health establishment to which the mentally ill prisoner must be transferred; 15
- (b) ensure that arrangements are made to effect the transfer of the mentally ill prisoner to the appropriate health establishment designated in terms of section 49; and
- (c) in writing, notify the head of the prison and the administrator, if appointed, of the details of such transfer. 20

(3) The head of the prison must, within 14 days of receipt of the notice of the details of the transfer, cause the mentally ill prisoner to be transferred to the specified health establishment.

(4) Whenever a transfer is effected in terms of this section, the head of the health establishment receiving a mentally ill prisoner is— 25

- (a) deemed to have lawful custody of the prisoner only on admission; and
- (b) responsible for the safe custody of the prisoner.

Transfer of mentally ill prisoners between designated health establishments

54. (1) The head of the national department may from time to time order the transfer of a mentally ill prisoner from one health establishment designated in terms of section 49 to another if it is necessary for the care, treatment and rehabilitation of the mentally ill prisoner. 30

(2) Despite the determination of the national department in terms of section 53(2), the relevant Review Board may only order the transfer of a mentally ill prisoner to another health establishment designated in terms of section 49 with maximum security facilities— 35

- (a) if the mentally ill prisoner—
 - (i) previously absconded or attempted to abscond; or
 - (ii) has inflicted or is likely to inflict harm to others; and 40
- (b) on receipt of a written application setting out the facts on which the request is based made by the head of the health establishment at which the mentally ill prisoner is detained.

(3) The Review Board must forward a copy of the order in question to the head of the national department. 45

(4) The head of the national department must, within 14 days of receipt of the order—

- (a) determine the health establishment to which the mentally ill prisoner must be transferred; and
- (b) ensure that the necessary arrangements are made with the appropriate health establishment to effect the transfer. 50

(5) The head of a health establishment in which a mentally ill prisoner is detained may, with the concurrence of the head of a health establishment with maximum security facilities, effect a transfer to such health establishment pending an order by the relevant Review Board if the conduct of the mental health care user has or is likely to give rise to an emergency. 55

(6) Whenever a transfer is effected in terms of this section—

- (a) the person or body ordering the transfer must, in writing within 14 days of the transfer, notify the head of the prison where the prisoner is detained of the details of the transfer; and
- (b) the head of the health establishment receiving the mentally ill prisoner—
 - (i) is regarded as having lawful custody of the prisoner concerned only upon receiving the prisoner; and
 - (ii) is thereafter responsible for the safe custody of the prisoner.

Periodic reviews of mental health status of mentally ill prisoners

55. (1) The head of a health establishment in which a mentally ill prisoner is detained must cause the mental health status of that mentally ill prisoner to be reviewed every six months from the date on which the prisoner was received in that health establishment.

(2) The review must—

- (a) specify the mental health status of the mentally ill prisoner; and
- (b) set out recommendations regarding—
 - (i) a plan for further care, treatment and rehabilitation services for the mentally ill prisoner; and
 - (ii) the merits of returning the mentally ill prisoner to the prison from which the prisoner was initially transferred.

(3) The head of the health establishment must submit a summary report of the review to the—

- (a) Review Board;
- (b) relevant magistrate;
- (c) administrator, if appointed; and
- (d) head of the relevant prison.

(4) Within 30 days after receipt of the report, the Review Board—

- (a) may consult with any person who may have information concerning the mental status of the prisoner concerned;
- (b) must make recommendations regarding—
 - (i) a plan for further care, treatment and rehabilitation of the mentally ill prisoner concerned; and
 - (ii) the return of that prisoner to the prison from which the prisoner was initially transferred; and
- (c) must send a written notice of its recommendation and the reasons for such recommendation to the mentally ill prisoner, the administrator if appointed, the head of the relevant health establishment, the head of the national department and the magistrate concerned.

Recovery of mental health status of mentally ill prisoners

56. If the head of a health establishment has reason to believe from personal observation or from information obtained, that a mentally ill prisoner has recovered from the mental illness to such an extent that the prisoner no longer requires care, treatment and rehabilitation or that the required care, treatment and rehabilitation can be appropriately given at a prison, the head of the establishment must—

- (a) compile an appropriate discharge report;
- (b) inform the head of the prison that the prisoner is ready for discharge and collection by the prison officials; and
- (c) inform the relevant magistrate in writing.

Mentally ill prisoners who abscond from health establishments

57. (1) If a mentally ill prisoner has absconded or is deemed to have absconded, the head of the relevant health establishment must, in writing—

- (a) immediately notify and request members of the South African Police Service to locate, apprehend and return the mentally ill prisoner to the health establishment in question; and
- (b) notify the relevant magistrate and the head of the prison within 14 days of having notified the South African Police Service.

- (2) The South African Police Service must comply with the request.
- (3) If the mentally ill prisoner is considered dangerous, the head of the health establishment must notify the South African Police Service.
- (4) A mentally ill prisoner apprehended must be held in custody for such period as prescribed to effect a return. 5
- (5) A member of the South African Police Service may use such constraining measures as may be necessary and proportionate in the circumstances when apprehending a person or performing any function in terms of this section.

Procedure on expiry of term of imprisonment of mentally ill prisoner

58. (1) A mentally ill prisoner must, subject to subsections (2) and (3), be released from prison or a health establishment designated in terms of section 49 at which the prisoner is detained on expiry of the term of imprisonment to which that prisoner was sentenced. 10
- (2) At least 90 days before expiry of the term of imprisonment, an application may be made according to the relevant provisions in Chapter V to the head of the health establishment in which the mentally ill prisoner is detained for the provision of assisted or involuntary care, treatment and rehabilitation, as the case may be, of the prisoner. 15
- (3) At least 30 days before the expiry of the term of imprisonment, an application may be made to a magistrate for the continued detention of a mentally ill prisoner in the designated health establishment where such prisoner was cared for, treated and rehabilitated pending the finalisation of the application referred to in subsection (2). 20

CHAPTER VIII

CARE AND ADMINISTRATION OF PROPERTY OF MENTALLY ILL PERSON OR PERSON WITH SEVERE OR PROFOUND INTELLECTUAL DISABILITY

25

Appointment of administrator for care and administration of property of mentally ill person or person with severe or profound intellectual disability

59. (1) A Master of a High Court may appoint an administrator to care for and administer the property of a mentally ill person or person with severe or profound intellectual disability on consideration and processing of— 30
- (a) an application submitted in terms of section 60; or
 - (b) an order made by a High Court after an appeal or an enquiry referred to in section 60 or 61, respectively, stating that such person is incapable of managing his or her property and that an administrator be appointed.
- (2) An administrator may only be appointed in respect of the property of a mentally ill person or person with severe or profound intellectual disability if the procedures set out in sections 60 or 61 have been complied with. 35

Application to Master of High Court for appointment of administrator

60. (1) Any person over the age of 18 may apply to a Master of a High Court for the appointment of an administrator for a mentally ill person or person with severe or profound intellectual disability. 40
- (2) The application must be made in writing, under oath or solemn affirmation and must—
- (a) set out the relationship of the applicant to that person and—
 - (i) if the applicant is not a spouse or next of kin of that person, the reason why the spouse or next of kin did not make the application; and 45
 - (ii) if they are not available to make the application, what steps were taken to establish their whereabouts before making the application;
 - (b) include all available mental health related medical certificates or reports relevant to the mental health status of that person and to his or her incapability to manage his or her property; 50

- (c) set out the grounds on which the applicant believes that such person is incapable of managing his or her property;
- (d) state that, within seven days immediately before submitting the application, the applicant had seen that person;
- (e) state the particulars of that person and his or her estimated property value and annual income; and 5
- (f) give the particulars and contact details of persons who may provide further information relating to the mental health status of that person.
- (3) The applicant must attach proof that a copy of the application has been submitted to the mentally ill person. 10
- (4) The Master of the High Court may, after considering the application—
 - (a) appoint an interim administrator pending the outcome of the investigation referred to subsection (5); or
 - (b) appoint an administrator without conducting such investigation, if—
 - (i) the estimated property value and annual income of that person is below the prescribed amount; and 15
 - (ii) satisfied that sufficient good grounds exist to make the appointment.
- (5) The Master of the High Court must, within 30 days of receipt of the application, cause an investigation into the merits of the application to be conducted by a suitably qualified person, if— 20
 - (a) certain allegations in the application require confirmation;
 - (b) further information is required to support the application; or
 - (c) the estimated property value and annual income of that person is above the prescribed amount.
- (6) The person conducting the investigation— 25
 - (a) must confirm all allegations and facts contained in the application and call on that person or his or her legal representative to respond to the application;
 - (b) may—
 - (i) summon any person to appear before him or her to provide information and documents relevant to the application; and 30
 - (ii) enquire into the financial position of that person; and
 - (c) must submit a report on his or her findings to the Master of the High Court.
- (7) The investigation must be finalised within 60 days of being instituted or such extended periods as may be granted by the Master.
- (8) The Master must, within 14 days after considering the report— 35
 - (a) appoint an administrator;
 - (b) decline to appoint an administrator; or
 - (c) refer the matter for consideration by a High Court Judge in chambers.
- (9) The Master must, in writing, inform the applicant and the mentally ill person or person with severe or profound intellectual disability of his or her decision and the reasons thereof. 40
- (10) The applicant, mentally ill person or person with severe or profound intellectual disability may, within 30 days of receipt of the written notice, appeal against the decision of the Master by submitting a written notice of appeal to a High Court Judge in chambers and a copy to the Master setting out the grounds of the appeal. 45
- (11) If the Master refers the application for the consideration by a High Court Judge in chambers, or receives a copy of the written notice of appeal, he or she must, within 14 days, submit to the High Court Judge in chambers a copy of—
 - (a) the application;
 - (b) a written summary of his or her findings; 50
 - (c) a report on the investigation in terms of subsection (5), if conducted;
 - (d) the reasons for declining the application or for referring the application to the High Court Judge in chambers; and
 - (e) the notice of appeal by the applicant, in the case of an appeal.
- (12) The High Court Judge in chambers must, within 30 days of receipt of the relevant documents— 55
 - (a) consider the application or appeal, as the case may be, in the appropriate manner, including providing the—

- (i) appellant or applicant, as the case may be;
 - (ii) independent mental health practitioners, if any; and
 - (iii) head of the relevant health establishment,
- with the opportunity to make oral or written representations on the merits of the application or appeal;

- (b) make a recommendation; and
- (c) send a written notice of the recommendation to the relevant Master of the High Court, the head of the relevant provincial department and the persons referred to in paragraph (a).

(13) The Master must, within 60 days of being notified of the recommendation by the High Court judge in chambers, cause an investigation to be conducted to determine a suitable candidate to be appointed as administrator for the person concerned and appoint the administrator.

(14) The costs for conducting the investigation referred to in subsections (5) and (13) must be—

- (a) paid out of the estate of the mentally ill person or if the Master or the High Court judge in chambers is of the view that the application was trivial or vexatious, out of the property of the applicant; and
- (b) determined by the Master after consultation with the person conducting the investigation.

Recommendation to appoint administrator by High Court during enquiry or in course of legal proceeding

61. (1) If a High Court, when conducting an enquiry in terms of this Act or during any legal proceeding, has reason to believe that a person in respect of whom an enquiry or legal proceeding is held or conducted may be incapable of managing his or her property, the High Court may, as part of that enquiry or proceeding, initiate an investigation into the mental health status of that person and his or her capacity to manage his or her property.

(2) The High Court may, when conducting such investigation, request for further information from any relevant person as may be necessary for purposes of establishing the mental health status of the person concerned and the capacity of that person to manage his or her property.

(3) If on completion of the investigation, the High Court finds that the mental health status of the person concerned is of such a nature that such person is incapable of managing his or her property, the High Court may—

- (a) recommend that an administrator be appointed in respect of that person; and
- (b) in writing, notify that person and a Master of a High Court of the finding and recommendation and the reasons thereof.

(4) The Master of the High Court must, within 60 days of the notice by the High Court—

- (a) cause an investigation to be conducted—
 - (i) into the estimated property value and annual income of the person concerned; and
 - (ii) to determine a suitable candidate to be appointed as administrator for that person; and
- (b) appoint an administrator, if the estimated property value and annual income of the person concerned is below the prescribed amount.

(5) The costs for conducting the investigation referred to in subsection (4) must be—

- (a) paid out of the estate of the mentally ill person; and
- (b) determined by the Master after consultation with the person conducting the investigation.

Confirmation of appointment of administrator

62. An appointment of an administrator is effective from the date on which a Master of a High Court signs an official notice of such appointment.

Powers, functions and duties of administrators and miscellaneous provisions relating to appointment of administrators

- 63.** (1) (a) An administrator must, before a Master of a High Court signs an official notice of appointment, lodge security with the relevant Master of the High Court of an amount to be determined by the Master. 5
- (b) The Master may, on good cause shown by the administrator—
- (i) reduce the amount of security required; or
 - (ii) dispense with security.
- (2) If the Master at any stage—
- (a) becomes aware that sequestration proceedings against the administrator have commenced or are likely to be instituted; or 10
 - (b) has reason to believe that it is in the best interest of the person in respect of whom the administrator has been appointed, he or she may—
 - (i) increase the amount of security to be paid by that administrator, or 15
 - (ii) appoint a co-administrator, and all acts relating to the property of the person concerned must be done with the consent of both administrators.
- (3) An administrator has powers and functions to—
- (a) take care of and administer the property of the person for whom he or she is appointed and perform all functions incidental thereto; and 20
 - (b) carry on any business or undertaking of that person subject to any other law.
- (4) An administrator—
- (a) may not alienate or mortgage any immovable property of the person for whom he or she is appointed unless authorised to do so by a court order or with the consent of the relevant Master of the High Court; and 25
 - (b) his or her spouse, child, parent, partner, associate or agent may not purchase or otherwise acquire any property of that person unless—
 - (i) with the consent of the relevant Master; or
 - (ii) the purchase or acquisition was, in writing, legally authorised by that person before that administrator was appointed. 30
- (5) An administrator must, immediately after his or her appointment pay all moneys received on behalf of the person he or she is appointed for into the hands of the relevant Master of the High Court, unless—
- (a) the Master directs otherwise;
 - (b) a legal document of that person made before the administrator was appointed, 35
 - authorises otherwise; or
 - (c) the money is required to—
 - (i) repay of any debt;
 - (ii) pay expenses relating to the safe custody of the property of that person;
 - (iii) maintain or educate that person or his or her dependants; or 40
 - (iv) pay for the current expenditure of the business or undertaking of the person.

Termination of administrator

- 64.** (1) The term of office of an administrator appointed in terms of this Act may only be terminated on consideration of an application made by— 45
- (a) a person in respect of whom the administrator was appointed;
 - (b) that administrator; or
 - (c) the person who made an application for the appointment of the administrator concerned.
- (2) The application must— 50
- (a) be made by way of a written affidavit;
 - (b) be sent to a Master of a High Court; and
 - (c) contain—
 - (i) the grounds on which the application is based;

- (ii) all medical certificates or reports relevant to the mental health status of the person concerned issued subsequent to the appointment of that administrator; and
 - (iii) the estimated property value of that person at the time of submitting the application. 5
- (3) The Master of the High Court must, within 14 days of receipt of the application—
- (a) terminate the appointment of the administrator;
 - (b) decline the application; or
 - (c) refer the matter for the consideration by a High Court judge in chambers.
- (4) If the Master of the High Court terminates such appointment or declines the application to terminate, he or she must, in writing, notify the applicant of the decision and reasons thereof. 10
- (5) If the Master of the High Court declines the application or refuses to refer the application for consideration by a High Court Judge in chambers, the applicant may, within 30 days of receipt of the notice referred to in subsection (4), appeal against the decision of the Master— 15
- (a) by submitting a written notice of appeal to a High Court judge in chambers;
 - (b) setting out the grounds of the appeal; and
 - (c) submit a copy of the notice to the Master.
- (6) The Master of the High Court must, within 14 days after receipt of an appeal in terms of subsection (5) or after referring an application to a High Court for consideration, submit to the High Court a copy of— 20
- (a) the application;
 - (b) a written summary of his or her findings;
 - (c) the reasons for refusing the application or for referring the application to the High Court, as the case may be; and 25
 - (d) the notice of appeal, in the case of an appeal.
- (7) The High Court must, within 30 days of receipt of the relevant documents—
- (a) consider the application or appeal in the prescribed manner, as the case may be; 30
 - (b) provide the—
 - (i) appellant;
 - (ii) relevant administrator;
 - (iii) independent mental health practitioners, if any; and
 - (iv) head of the health establishment, 35
 the opportunity to make oral or written representations on the merits of the application or appeal; and
 - (c) in writing, notify the appellant, administrator, head of the health establishment concerned and head of the relevant provincial department of his or her decision and the reasons thereof. 40

Administration of property of mentally ill person or person with severe or profound intellectual disability

65. In addition to this Chapter the provisions of sections 75, 78, 79, 83, 84 and 85 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), with the necessary changes, apply to any administrator appointed in respect of a mentally disabled person. 45

CHAPTER IX

REGULATIONS

Regulations

66. (1) The Minister may, after consultation with all relevant members of the Executive Council, make regulations on— 50
- (a) surgical procedures or medical or therapeutic treatment for mental health care users;
 - (b) setting of quality standards and norms for care, treatment and rehabilitation of mental health care users;

- (c) establishment of maximum security facilities for mental health care users;
- (d) seclusion of mental health care users and use of mechanical means of restraint;
- (e) establishment of facilities for State patients and mentally ill prisoners;
- (f) observation, detention, care, treatment and rehabilitation of mental health care users referred to a health establishment by a court of law; 5
- (g) expediting the processing of applications referred to in Chapter V;
- (h) establishment of child, adolescent and geriatrics facilities to promote their mental health status and their admission, care, treatment and rehabilitation at health establishments; 10
- (i) establishment and implementation of educational programmes for mental health care users admitted at health establishments;
- (j) discharge or leave of absence of mental health care users on their recovery or on the application from spouses or associates;
- (k) transfer, removal and transportation of mental health care users to a health establishment and the assistance by members of the South African Police Service in effecting a removal or transfer and conditions to be attached to such removal or transfer; 15
- (l) books and records which must be kept at a health establishment in respect of a mental health care user and the entries which must be made therein, including the accounts, returns, reports, extracts, copies, statements, notices, documents and information which must be sent to the Minister; 20
- (m) payment of maintenance costs and expenses incurred in connection with the transfer, detention, care, treatment and rehabilitation and maintenance of any mental health care user in health establishments administered under the auspices of State; 25
- (n) estimated property value and annual income of a mentally ill person or person with severe or profound intellectual disability in respect of whom an administrator may be appointed;
- (o) authorisation and licensing of health establishments administered under the auspices of State, a non-governmental organisation or private body providing mental health care, treatment and rehabilitation services and conditions to be attached to such authorisation or licence; 30
- (p) matters concerning the powers, functions, guidelines for exercising these powers and functions and reporting obligations of a Review Board; 35
- (q) care, treatment and rehabilitation of mental health care users with specified infectious or communicable diseases;
- (r) the period within which mental health care users may be kept in Police custody; and
- (s) any matter necessary or expedient in order to achieve the objectives of this Act. 40

Content of regulations

- 67. (1) A regulation made under this Act may—
 - (a) confer powers or duties on any person, body or public authority;
 - (b) contain conditions and provide for exemptions; or 45
 - (c) be in respect of different—
 - (i) parts of the Republic; or
 - (ii) categories of persons.
- (2) The Minister may, in any regulation made under this Act—
 - (a) designate as authoritative any published methodology, procedure, practice or standard that is generally recognised as authoritative within the relevant profession; and 50
 - (b) require any person or body to comply with that designated methodology, procedure, practice or standard.

Procedure for making regulations

55

- 68. (1) The Minister must, before making or amending regulations under this Act—
 - (a) by notice in the *Gazette*, publish his or her intention to make regulations;
 - (b) state in the notice—

- (i) that draft regulations have been developed for comment; and
 - (ii) where a copy of the draft regulation may be obtained;
 - (c) allow at least 30 days period for comment; and
 - (d) consider comments received.
- (2) At any time before issuing regulations, discussions and consultations may be held with any interested group. 5
- (3) Subsection (1) does not apply in respect of—
- (a) any regulation which the public interest requires to be made without delay; or
 - (b) an amendment to correct a textual error.
- (4) Any regulation regarding State revenue or expenditure must be made with the concurrence of the Cabinet member responsible for finance. 10
- (5) Any regulation regarding the South African Police Service must be made with the concurrence of the Cabinet member responsible for safety and security.
- (6) Any regulation regarding education must be made with the concurrence of the Cabinet member responsible for education. 15
- (7) Any regulation regarding the terms and conditions of a person employed by the national department, a provincial department or district health authority or any labour relations matter, must be made with the concurrence of the Cabinet member responsible for public service and administration.
- (8) Any regulation regarding the appointment of an administrator including the threshold amounts for the appointment of a Master of a High Court as administrator and conditions for such appointment, must be made with the concurrence of the Cabinet member responsible for justice and constitutional development. 20

Conditions and exemptions contained in regulations

69. (1) The Minister may, at any time by notice in the *Gazette* with regard to any institution, person, body, or organisation— 25
- (a) impose, vary or withdraw any condition in a regulation; or
 - (b) grant, vary or withdraw an exemption in a regulation.
- (2) The Minister may not vary or withdraw any condition or exemption made under this Act unless a person or body affected made representation to that effect. 30

CHAPTER X

GENERAL PROVISIONS

Offences and penalties

70. (1) Any person who—
- (a) misrepresents a fact in any application, report, record, certificate; 35
 - (b) obstructs or hinders any person in the performance of his or her functions;
 - (c) neglects, abuses or treats a mental health care user in any degrading manner or allows the user to be treated in that manner;
 - (d) assists or incites a mental health care user—
 - (i) to abscond from a health establishment at which he or she is admitted; or 40
 - (ii) not to comply with any care, treatment and rehabilitation plan or terms of a leave of absence or conditional discharge; or
 - (e) refuses to furnish information or provides false information to a member of the South African Police Service about the whereabouts of a mental health care user who has absconded or is deemed to have absconded, 45
- under this Act, is guilty of an offence.
- (2) Any person who is found guilty of an offence under this Act is liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Establishment of advisory or technical committees

50

71. (1) The Minister may appoint an advisory or a technical committee in order to achieve the objectives of this Act.

- (2) When appointing an advisory or a technical committee, the Minister may, by regulations, determine—
- (a) the composition, functions, and working procedure of the committee;
 - (b) the terms, conditions, remuneration and allowances applicable to members of such committee with the concurrence of the Cabinet member responsible for finance; and
 - (c) any other incidental matter.

Delegation and assignment of powers and agreements

72. (1) (a) The Minister may, in writing, delegate any power conferred on him or her by this Act or any other law to any—
- (i) person in the employ of the State; or
 - (ii) board or body established under this Act, except the powers referred to in section 66.
- (b) The relevant member of the Executive Council may, in writing, delegate any power conferred on him or her by this Act or the Minister to any person or body referred to in paragraph (a).
- (2) A person or body to whom any power is delegated may exercise that power subject to the direction of the Minister or relevant member of the Executive Council.
- (3) The Minister or relevant member of the Executive Council may, at any time—
- (a) withdraw a delegation made under subsection (1); or
 - (b) withdraw or amend any decision made in the exercise of such delegated power.
- (4) A decision made in the exercise of any delegated power, unless withdrawn or amended, is deemed to have been made by the Minister or relevant member of the Executive Council, as the case may be.
- (5) Any right or privilege acquired or any obligation or liability incurred as a result of a decision made in terms of a delegated power referred to in subsection (1) cannot be affected by any subsequent withdrawal or amendment of that decision.
- (6) The national department or a provincial department may enter into agreement with any non-governmental organisation or public or private provider of goods or services in order to exercise powers and perform functions and duties under this Act.

Repeal of laws

73. (1) The laws set out in the first and second column of the Schedule are repealed to the extent set out in the third column of the Schedule.
- (2) The repeal does not affect any transitional arrangement contained in section 74.

Transitional arrangements

74. (1) The transitional arrangements in this section must be read and applied as substantive provisions of this Act.
- (2) Anything done before the commencement of this Act in terms of the laws repealed is regarded as done under this Act and continues to be of force and effect—
- (a) except if it is inconsistent with this Act; or
 - (b) until it is set aside or repealed.
- (3) Any proceedings instituted or procedures conducted under the laws repealed by this Act, must be disposed of as if this Act has not been enacted.
- (4) Any person who in terms of the laws repealed by this Act was considered a voluntary patient, must on the commencement of this Act be dealt with in terms of section 25.
- (5) (a) Any person who in terms of the laws repealed by this Act was regarded as a patient by consent, is at the commencement of this Act deemed to be an assisted mental health care user and for purposes of section 30 must be reviewed within six months.
- (b) Any review done within six months before the commencement of this Act is deemed to be a six months review in terms of section 30.

(6) (a) Any person issued with a detention order in terms of the laws repealed by this Act, is on the commencement of this Act deemed to be an involuntary mental health care user and for purposes of section 37 must be reviewed within six months.

(b) Any review done within six months before the commencement of this Act is deemed to be a six months review in terms of section 37. 5

(7) (a) Any person who in terms of the laws repealed by this Act, was regarded as a State patient or mentally ill prisoner must, on the commencement of this Act, be dealt with in terms of Chapters VI and VII, respectively, and for purposes of sections 46 and 55, respectively, be reviewed within six months.

(b) Any review done within six months before the commencement of this Act is deemed to be a six months review in terms of sections 46 and 55, respectively. 10

(8) Any certificate issued in terms of section 43 or 44 of the laws repealed by this Act continues to be of force and effect but the duration of the certificate may not be extended on its expiry.

Short title and commencement

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75. This Act is called the Mental Health Care Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE**LAWS REPEALED**

No. and year of Act	Short Title	Extent of Repeal
Act No. 18 of 1973	Mental Health Act, 1973	The whole except Chapter 8.
Act No. 19 of 1981 (Transkei)	Mental Health Act, 1981	The whole.
Act No. 26 of 1985 (Bophuthatswana)	Mental Health Act, 1985	The whole.
Act No. 23 of 1986 (Ciskei)	Mental Health Act, 1986	The whole.
Proclamation No. 26 of 1992 (Venda)	Mental Health Amendment Proclamation, 1992 (Venda)	The whole.

MEMORANDUM ON THE OBJECTS OF THE MENTAL HEALTH CARE BILL

1. BACKGROUND

- (1) The "Bill" seeks to ensure that appropriate care, treatment and rehabilitation services are made available to people with mental health problems in line with a primary health care approach.
- (2) The Bill promotes and safeguards the human rights of people with mental disabilities and balances these rights with those of the public in circumstances where their rights may be infringed upon by a person with a mental disability.
- (3) This legislation will repeal the Mental Health Act, 1973 which is widely considered to be outdated and, in part, unconstitutional. The Bill is limited primarily to aspects of mental health care and is thus termed the Mental Health Care Act as opposed to the current Mental Health Act (which is regarded as being inappropriately named).

2. OBJECTS OF BILL

The objects of the Bill are set out in section 3. The objectives are to—

- (a) regulate the mental health care environment in a manner which—
 - (i) enables the provision of the best possible mental health care, treatment and rehabilitation that available resources can afford;
 - (ii) makes effective mental health care, treatment and rehabilitation services available to the population equitably, efficiently and in the best interests of the mental health care user;
 - (iii) co-ordinates access to and the provision of mental health care, treatment and rehabilitation services; and
 - (iv) integrates access to and the provision of mental health care services within the general health services environment.
- (b) set out the rights and obligations of mental health care users and the obligations of mental health care providers;
- (c) regulate access to and the provision of mental health care and treatment to—
 - (i) voluntary, assisted and involuntary mental health care users;
 - (ii) state patients; and
 - (iii) mentally ill prisoners; and
- (d) regulate the manner in which the property of those with a mental illness and severe and profound intellectual disability may be dealt with by a court of law.

3. CONTENTS OF BILL

- (1) Chapter I provides for the *definitions*.
- (2) Chapter II deals with *fundamental provisions*.
This Chapter outlines the role of the State in providing mental health services. It provides for much greater accessibility and integration of mental health services at the various levels of health care provision than is presently the case.
- (3) Chapter III covers *rights and duties relating to mental health*.
The specific rights dealt with include—
 - (a) respect, human dignity and privacy;
 - (b) consent to care, treatment and rehabilitation and admission to health establishments;
 - (c) unfair discrimination;
 - (d) exploitation and abuse;
 - (e) determinations concerning mental health status;
 - (f) confidentiality;
 - (g) limitations on intimate adult relationships;
 - (h) right to be represented;

- (i) right to discharge report; and
- (j) full knowledge of rights.
- (4) Chapter IV provides for setting up *Mental Health Review Boards*.
The Bill makes provision for the establishment of Mental Health Review Boards with provinces specifically to ensure the protection of the rights of persons who are committed into care, treatment and rehabilitation without their consent.
- (5) Chapter V deals with *voluntary, assisted and involuntary mental health care*.
 - (a) This Chapter regulates the procedure authorising the provision of care treatment and rehabilitation.
 - (b) In this Bill, voluntary patients are viewed and treated in the same manner as persons with other health problems.
 - (c) Processes are set up for the admission and treatment of persons who are unable to give informed consent due to mental illness or intellectual disability (assisted) users. This includes making applications, examination of the person by mental health care practitioners and a review and confirmation by a Review Board. Appeal processes and periodic reporting are put in place.
 - (d) With regard to involuntary care and treatment, similar processes to those applicable to “assisted” patients are set out. In addition, provisions are made for a 72 hour assessment period which may enable a user to recover from an illness before being committed to a psychiatric hospital. The decision of the Review Board is sent to a Judge for further consideration.
 - (e) The Chapter also deals with maximum security facilities which are at times required for mentally ill people.
- (6) Chapter VI deals with State patients.
This Chapter deals with people declared by the courts to be unfit to stand trial. Processes are set up for the transfer of the patient from detention centre, leave of absence, periodic reports through to discharge procedures.
- (7) Chapter VII deals with *prisoners who are mentally ill*.
If a prisoner becomes mentally ill to such an extent that they must be transferred to a psychiatric hospital, this can be done after various procedures have been followed. Transfer back to the prison or discharge after the expiry of sentence are covered.
- (8) Chapter VIII provides for the *care and administration of property of the mentally ill person or person with severe or profound intellectual disability*. Provision is made for an administrator to be appointed to administer and manage the property of a mentally ill person when the need for this arises.
- (9) Chapter IX deals with *regulations*.
The Minister, after consultation with the relevant MECs, may issue regulations regarding a number of issues, including—
 - (a) surgical procedures or medical or therapeutic treatment;
 - (b) norms and standards;
 - (c) maximum security facilities;
 - (d) funding of non-government organisations; and
 - (e) licensing of facilities.
 This Chapter also sets out the procedure to be followed when regulations are to be passed.
- (10) Chapter X deals with *general provisions*.
This Chapter deals with offences and penalties; establishment of technical committees; assignment and delegation of powers; repeal laws and transitional arrangements.

4. CHANGES FROM CURRENT ACT

Some of the major changes from the current Act include—

- (a) Change in title of the statute.
- (b) Inclusion of a Chapter dealing with patient rights. This chapter is critically important as people with mental disabilities are still discriminated against and not protected sufficiently by law.

- (c) Introduction of a "mental health care practitioner" category. This will allow for much greater accessibility to various mental health services. It will also ensure that mental health functions are carried out by people able and qualified to do so.
- (d) Addition of "Mental Health Review Boards". This will protect patients from arbitrary or unnecessary committal and retention. This involves a shift from certification by a magistrate (which in practice has merely become a magisterial ratification) to a Board which includes a legal person (who may be a magistrate), a mental health care practitioner and a community member.
- (e) Introduction of a 72 hour assessment period prior to involuntary admission at a psychiatric hospital. This is added as many people recover in this period and the system can avoid many problems and save on administration associated with certification. This is also advantageous to the service user.
- (f) Shortening of the period of review for involuntary, assisted, State patients and prisoners who are mentally ill.
- (g) Various sections of the current Act have been omitted. For example, the section prohibiting the reporting of conditions in psychiatric institutions and how to deal with patients from other states. Hospital Boards have been taken out to avoid duplication with the proposals of the Health Bill. (Transitional arrangements have been made until such time as the new Health Bill is passed).

5. FINANCIAL IMPLICATIONS

Direct financial costs will accrue as a result of the establishment and workings of the Mental Health Review Board. However, a costing of the potential savings (based on estimates of hospital days which should be saved through the introduction of the Review Board) indicates that in time there should be overall savings in introducing this structure.

The Bill provides the right of mental health care users to be represented, including obtaining legal representation. For indigent users this way require assistance in terms of the Legal Aid Act. In correspondence with the Legal Aid Board they have asserted that unless additional funding is allocated for this purpose, they will not be able to provide this assistance. It is extremely difficult to assess the potential costs as it is unclear how much this right will be utilised.

6. PERSONS/ORGANISATIONS/BODIES CONSULTED

The following persons, organisations and bodies were consulted—

- (a) National Departments including Correctional Services; Justice/Master's Office/Directorate of Public Prosecutions; South African Police Service; Social/Development; Public Service and Administration; Education; Transport.
- (b) All provincial Health Departments and a number of local authorities through the province.
- (c) Office of the Status of Disabled People.
- (d) South African Human Rights Commission.
- (e) Legal Aid Board.
- (f) South African Law Commission.
- (g) All Psychiatry, Psychology and Psychiatric Nursing Departments at all universities.
- (h) National Progressive Primary Health Care Network.
- (i) Society of Psychiatrists of South Africa.
- (j) South African Federation for Mental Health.
- (k) Citizens Commission for Human Rights.
- (l) South African Federal Council on Disability.
- (m) Psychological Society of South Africa.
- (n) Life Care Special Health Services.
- (o) Democratic Nursing Association of South Africa.
- (p) Various individuals, including consumers of mental health services.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Health are of the opinion that the Bill must be dealt with in accordance the procedure prescribed by section 76 of the Constitution since the Bill falls within a functional area listed in Schedule 4 to the Constitution, namely "Health Services".